

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD GEDEON,

Defendant-Appellant.

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UNPUBLISHED

April 15, 2003

No. 239526

Wayne Circuit Court

LC No. 01-002151-01

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from jury convictions of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a), and one count of second-degree criminal sexual conduct, MCL 750.520c(1)(a), for which he was sentenced to concurrent terms of thirty-two to sixty years, life in prison, life in prison, and five to fifteen years, respectively. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court erred in admitting evidence that he sexually abused the victim's sisters. The trial court's ruling on this issue is reviewed for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). "A preserved, nonconstitutional error is not a ground for reversal unless 'after an examination of the entire cause, it shall affirmatively appear' that it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person to show action in conformity therewith. Thus, if the sole purpose in offering the evidence is to show the defendant's propensity for particular conduct based on his character as inferred from other wrongful conduct, it is not admissible. *People v Gimotty*, 216 Mich App 254, 259; 549 NW2d 39 (1996). It is admissible, however, for another purpose, "such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident" if that purpose is material. MRE 404(b)(1).

The admissibility of other acts evidence is to be evaluated using the safeguards already present in the rules of evidence. *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). The court must first determine whether the evidence is relevant to an issue other than the defendant's propensity to commit the crime charged under MRE 404(b). Second, the logical relevance of the evidence must be evaluated using the relevance

definition provided under MRE 401 and MRE 402 as enforced through MRE 104(b). Third, the court must evaluate the evidence under MRE 403 to make certain that the danger of undue prejudice does not substantially outweigh the probative value of the evidence. Finally, should a party request a limiting instruction, the court may provide one under MRE 105. *Id.* at 74-75.

The evidence was admitted for a proper purpose, both to show that defendant utilized his parent-child relationship as part of plan to perpetrate the sexual abuse, *People v Sabin (After Remand)*, 463 Mich 43, 66; 614 NW2d 888 (2000), and to refute defendant's claim that the complainant fabricated the charges. *People v Starr*, 457 Mich 490, 501-502; 577 NW2d 673 (1998). Although the evidence was prejudicial, that prejudice was inherent in its relevance, *People v Magyar*, 250 Mich App 408, 416; 648 NW2d 215 (2002), and was not so great as to substantially outweigh its probative value, especially in light of the fact that the court gave a special limiting instruction to the jury no fewer than six times. *Starr, supra* at 503. Therefore, the trial court did not abuse its discretion in admitting the evidence. Even if we were to conclude otherwise, it is unlikely, given defendant's confession, that the error would have been outcome determinative. *Lukity, supra*.

Defendant next contends that the trial court erred in admitting his confession because it was not audio taped or video taped. This Court has considered and rejected such a claim in *People v Fike*, 228 Mich App 178, 184-185; 577 NW2d 903 (1998), which decision is binding pursuant to MCR 7.215(I)(1). Therefore, defendant has failed to establish a right to relief on this unpreserved issue. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Affirmed.

/s/ Kathleen Jansen  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood